

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

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HOUSE BILL NO. 1225

Introduced by: Representatives Craig, Brunner, Deutsch, DiSanto, Greenfield (Lana), Heinemann (Leslie), Hunt, Klumb, Marty, Otten (Herman), Qualm, Rasmussen, Schoenfish, Stalzer, Willadsen, and Wollmann and Senators Rampelberg, Ewing, Greenfield (Brock), Olson, Otten (Ernie), Shorma, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to provide for the forfeiture and disposition of certain
2 property utilized in acts of terrorism.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 All property, including money, used in the course of, intended for use in the course of,
6 derived from, or realized through conduct in violation of § 22-8-12, is subject to civil forfeiture
7 to the state.

8 Section 2. That the code be amended by adding a NEW SECTION to read:

9 Terms used in this Act mean:

10 (1) "Aiding a person or entity who commits an act of terrorism," the raising, soliciting,
11 collecting, or providing material support or resources with intent that the material
12 support or resources will be used, in whole or in part, to plan, prepare, carry out, or
13 aid in any act that violates § 22-8-12 or hinders the prosecution of any act that



1 violates § 22-8-12;

2 (2) Hindering prosecution of terrorism," includes the following:

3 (a) Harboring or concealing a person who is known or believed by the offender
4 to have committed any act that violates § 22-8-12;

5 (b) Warning a person who is known or believed by the offender to have
6 committed an act that violates § 22-8-12 of impending discovery or
7 apprehension;

8 (c) Suppressing any physical evidence that might aid in the discovery or
9 apprehension of a person who is known or believed by the offender to have
10 committed any act that violates § 22-8-12;

11 (3) "Material support or resources," currency or other financial securities, financial
12 services, instruments of value, lodging, training, safehouses, false documentation or
13 identification, communications equipment, computer equipment, software, facilities,
14 weapons, lethal substances, explosives, personnel, transportation, and other physical
15 assets, except the provision of medical attention by a licensed health care provider
16 or religious materials.

17 Section 3. That the code be amended by adding a NEW SECTION to read:

18 Any person injured as a result of a criminal offense under § 22-8-12 or a law enforcement
19 agency or other governmental agency that participated in the investigation, mitigation, seizure,
20 or forfeiture process for a criminal offense under § 22-8-12 may file a claim for costs or
21 damages, and the property described in section 1 of this Act shall be used to satisfy any costs
22 or damages awarded for the claim.

23 Section 4. That the code be amended by adding a NEW SECTION to read:

24 Any person injured as a result of a criminal offense under § 22-8-12 may file a cause of

1 action against:

- 2 (1) Any person or entity who committed the act of terrorism;
- 3 (2) Any person or entity who aided the person or entity who committed the act of
- 4 terrorism; and
- 5 (3) Any person or entity who coerced, induced, or solicited the person or entity who
- 6 committed the act of terrorism.

7 A person who is so injured is entitled to threefold the actual damages sustained, or ten

8 thousand dollars, whichever is greater, as well as attorney's fees, costs of investigation, and costs

9 of litigation reasonably incurred in the trial and appellate courts.

10 Section 5. That the code be amended by adding a NEW SECTION to read:

11 No forfeiture or disposition under this Act affects the rights of a factually innocent person.

12 A mortgage, lien, privilege, other security interest, or joint ownership interest is not affected by

13 a forfeiture under this Act if the owner of the mortgage, lien, privilege, other security interest,

14 or joint owner establishes that the owner is a factually innocent person.

15 Section 6. That the code be amended by adding a NEW SECTION to read:

16 The allocation of proceeds from a forfeiture and disposition under this section shall be paid

17 to claimants in the following order:

- 18 (1) First, the costs of investigation shall be paid to the law enforcement agency or
- 19 governmental agency that conducted the investigation. If more than one law
- 20 enforcement agency or governmental agency equally conducted the investigation, the
- 21 costs of investigation shall be paid equally to the law enforcement agencies and
- 22 governmental agencies conducting the investigation. If one law enforcement agency
- 23 or governmental agency primarily conducted the investigation, the costs of
- 24 investigation first shall be paid to that law enforcement agency or governmental

agency, with actual vouchered costs reimbursed on a pro rata basis to the other law enforcement agencies or governmental agencies participating in the investigation, not to exceed ten percent of the costs of investigation allocated to the primary law enforcement agency or governmental agency;

(2) Second, twenty-five percent of the proceeds plus the costs of prosecution or all of the remaining proceeds, whichever is less, shall be paid to the prosecuting attorney;

(3) Third, the costs of investigation shall be paid on a pro rata basis to a law enforcement agency or governmental agency that was not fully reimbursed;

(4) Fourth, the costs of mitigation, seizure, or forfeiture shall be paid on a pro rata basis to a law enforcement agency or governmental agency that participated in the mitigation, seizure, or forfeiture process; and

(5) Fifth, any remaining proceeds shall be paid on a pro rata basis to satisfy any judgments entered for persons injured as a result of the criminal offense under § 22-8-12.

Section 7. That the code be amended by adding a NEW SECTION to read:

Property subject to forfeiture under this Act may be seized by a law enforcement officer upon the issuance of a court order. Seizure without a court order may be made if the seizure is incident to a lawful arrest or search or the property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based on this section.

Section 8. That the code be amended by adding a NEW SECTION to read:

A forfeiture action resulting from a seizure under this Act shall be instituted promptly. Property taken or detained under this Act is not subject to sequestration or attachment but is deemed to be in the custody of the law enforcement officer making the seizure, subject only to the order of the court.

1 Section 9. That the code be amended by adding a NEW SECTION to read:

2 Whenever property is seized under this Act, pending forfeiture and final disposition, the law
3 enforcement officer making the seizure may:

4 (1) Place the property under seal;

5 (2) Remove the property to a place designated by the court; or

6 (3) Request another agency authorized by law to take custody of the property and remove
7 it to an appropriate location.

8 Section 10. That the code be amended by adding a NEW SECTION to read:

9 The limitations period for a claim or cause of action brought under this Act is five years
10 from the date of the discovery of the violation of § 22-8-12.